

The Requirement to Post Calorie Counts on Menus In New York City Food Service Establishments

(Section 81.50 of the New York City Health Code)



How to Comply:

What Your Establishment
Needs to Know about
Posting Calories on Menus
and Menu Boards



SUMMARY OF THE HEALTH CODE PROVISION

New York City Health Code Section 81.50 requires **covered** food service establishments (FSEs) that hold New York City Health Department permits to post calorie information prominently on menu boards and menus.

Covered FSEs, including mobile food vending units, within New York City must post calorie information prominently on menus and menu boards. The requirement applies to FSEs that:

- Are required to hold a New York City Department of Health and Mental Hygiene (NYC DOHMH) permit
- Belong to a group of 15 or more FSEs that operate under common ownership or are individually franchised, whether locally or nationally, or do business under the same name
- Offer substantially the same menu items, in servings that are standardized for portion size and content

A FSE subject to this regulation must post calorie information on:

- **All menu boards and menus**
- **Item tags — food items displayed for sale with food item tags**
- **Menu boards or adjacent stanchions at or prior to the point of ordering for drive-through windows**

This requirement does not apply to menu items that are listed on a menu or menu board for less than 30 days in a calendar year.

BASIC FACTS ON CALORIE POSTING

1. Why does this new health code section require calorie posting?

While some food service establishments make calorie information available through websites, brochures, posters, wrappers or tray liners, the new requirement will help enable customers to see this information at the point of purchase, where it can help them make more informed choices.

2. Why focus on calories?

New Yorkers get a third or more of their calories away from home. The lack of readily available calorie information in food service establishments makes it easy to consume too many calories without realizing it. Just 100 extra calories every day adds up to 10 pounds a year. Extra pounds can lead to obesity and diabetes, two major health problems on the rise in New York City, as well as heart disease.

COMPLYING WITH THE REGULATION

3. How do I know if the calorie-posting requirement applies to my establishment?

The requirement applies only to establishments that:

- Are required to hold a NYC DOHMH FSE permit
- Serve food with standardized preparation, portion sizes and content
- Operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name
- Belong to a group that includes 15 or more food service establishments in the United States.

4. Does the term “covered food service establishments” apply to mobile food vending units?

Yes. It applies to any mobile food vending unit pushcart or vehicle that:

- Is required to hold a DOHMH permit to sell food on public streets or in restricted areas such as parks
- Is one of a group of 15 or more mobile food units that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.
- Offers substantially the same menu items in servings that are standardized for portion size and content.

5. When does the requirement take effect?

The requirement became effective March 31, 2008, although enforcement was delayed until May 5, 2008 due to litigation.

6. What is a menu item?

A menu item means an individual food or beverage item, or combination of items, that is listed or displayed on a menu board or menu, or depicted on any other list or pictorial display, that includes price(s) and is visible within the food service establishment.

7. What is a menu?

A menu is a list or pictorial display of a food item or items and their prices. This includes take-out menus and may include some promotional signs, posters or table tents within the establishment.

8. Do I have to post calorie information for beverages?

Yes, a covered FSE must post calorie information for beverage items listed on a menu, menu board or item tag, including flavored waters, soft drinks and alcoholic beverages such as wine, beer, cocktails and other distilled spirits.

9. Where must I post calorie information?

A covered FSE must post calorie information on:

- All menu boards and menus
- Item tags — a food item or beverage displayed for sale with a tag
- Any other list or pictorial display of a food item or items and price(s) posted and visible within the food service establishment
- Menu boards or adjacent stanchions posted at or prior to the point of ordering for drive-through windows.

10. If I post calorie information for a menu item on a menu board, do I also have to post it on the menu or a food-item tag?

Yes. When a food item is displayed for sale with a food-item tag, the tag must include the calorie content for that item in a font size and format at least as prominent as the name of the food item. However, for menu items that come in different flavors and varieties, but are listed as single menu items on the menu board (e.g., beverages, ice cream, pizza or donuts), see Point 11.

11. How do I have to post calorie information?

Posted calorie information must:

- Clearly identify the number of calories derived from any source for each menu item
- Be posted clearly and conspicuously, in close proximity to the relevant menu item
- Be printed in a font and format that is at least as prominent as the name or price of the menu item. See the Sample below.

Sample Menu Board

	Price	Calories
Grilled Chicken	\$3.99	390
Crunchy Chicken	\$3.89	490
Fish Filet	\$3.29	450
Hamburger	\$0.99	280
Cheeseburger	\$1.39	300
Extra Large Hamburger	\$4.29	540
Fries – Small	\$1.00	300
Fries – Large	\$1.79	600
Hamburger and Small Fries	\$1.99	580

12. How should I display calorie information when the menu item comes in several flavors or sizes?

For menu items that come in different flavors and varieties but are listed as single menu items (e.g., beverages, ice cream, pizza or doughnuts), the menu and/or menu board must show the calorie range for each size offered for that menu item. FSEs may omit the calorie range for these items on a menu board if all the options within the range carry item tags.

13. What if a menu item is served with a combination of different food items?

For menu items that come in different combinations but are listed as a single menu item (e.g., appetizer sampler, chicken sandwich meal or surf and turf combination meal), the menu and/or menu board must post the range of calorie content values showing the minimum to maximum number of calories for all combinations of that item. If there is only one possible calorie total for the combination, then that total must be listed on menu boards and menus.

14. How should I calculate the calorie content value for my menu items?

Calorie count information should reflect the standard preparation of each menu item as served to the consumer. It must be based on a verifiable analysis of the menu item, which may include laboratory testing, use of nutrient databases or any other reliable method of analysis. Laboratory testing is not required. Calorie count should be rounded off to the nearest 10 calories for calorie counts above 50 calories and to the nearest five for calorie counts at or below 50 calories.

ENFORCEMENT

15. When the calorie-posting requirement takes effect, will the Health Department issue citations for violations?

Yes. The Health Department will begin citing violations for calorie posting requirements on May 5, 2008.

16. When the calorie-posting requirement takes effect, will the Health Department issue fines?

The Health Department will issue Notices of Violation that are returnable to the Administrative Tribunal and which may result in monetary penalties beginning after July 18, 2008.

17. Will calorie-posting violations be cited as 'critical' or 'general'?

Violations will not be counted as either critical or general, nor will they count toward your inspection score.

18. Will the Health Department follow up on calorie-posting violations?

Yes. Any food service establishment violating the calorie-posting requirement will receive a follow-up inspection to determine compliance.

19. Will calorie-posting violations be posted on the Health Department's restaurant inspection website?

Yes. Violations will be posted on the website, but not before April 22, 2008.

20. How much will I be fined if an inspector cites a calorie-posting violation at my establishment?

An Administrative Tribunal officer may assess fines between \$200 and \$2,000. Penalty amounts will increase for repeat violations.



Michael R. Bloomberg,
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